

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 861 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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THAKORE HATHISING LAXMAN

Versus

VIJAYABEN BHAGWANDAS MEHTA      HEIRS OF MEHTA BHAGVANDAS K.

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Appearance:

MR JC SHETH for Petitioners

MR PV HATHI for Respondents

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 12/01/98

ORAL JUDGEMENT

This revision under Section 29(2) of the Bombay Rent Act is filed by the original defendant Nos. 1, 4 and 5 against the judgement and decree dated 19.3.1984 passed by the Assistant Judge, Bhavnagar confirming the judgement and decree dated 31.12.1982 passed by the court of Civil Judge (J.D.), Savarkundla.

The plaintiff filed suit for eviction on the

ground of default in payment of rent as well as on the ground of sub-letting. The trial court decreed the suit for possession on the ground of sub-letting. The suit premise is a business premise. It was rented out to defendant No. 1 on monthly rent of Rs. 101/- under a written rent note dated 7.10.1966. The say of the plaintiff is that the defendant No. 1 stopped the business long back and has sub-let the premise to defendant Nos. 2 to 5. Defendant No. 1 stated that he was doing business as a proprietor and sole owner but now he has started business in the partnership with defendant Nos. 4 and 5. He also stated that defendant No. 4 has 50% share while defendant No. 5 and he himself have 25% share each. He however admitted that he has made absolutely new investment in the business and investment is only of defendant Nos. 4 and 5. The trial court on the basis of various documents produced found that every month Rs. 200/- has been debited in the account of defendant No. 1 by the new partnership firm. This shows that the rent of the suit shop has been paid at the rate of Rs. 200/- by the partnership firm to defendant No. 1. The court found that the real business is carried on by the defendant Nos. 4 and 5 under the sham or camouflage of partnership with defendant No. 1-original defendant. The court on the basis of oral and documentary evidence held that the tenancy rights have been thrown by the defendant No. 1 to the partnership assets and the interest is created in favour of incoming partners viz. defendant Nos. 4 and 5 who are otherwise strangers so far as the suit shop and the tenancy rights are concerned. The court also observed that defendant Nos. 4 and 5 have not been brought into as partners in the running business and converted the business of the partnership firm. The fact is that defendant No. 1 has closed his business entirely and joined the business started by defendant Nos. 4 and 5. Thus, according to the court below, in reality, it is a sham or camouflage partnership. The concurrent findings arrived at by the courts below are based on documentary evidence and also settled position of law.

In view of the aforesaid, there is no merit in this revision application and the same is accordingly rejected. Rule is discharged. Interim relief is vacated.

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